IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO.261 OF 2001

Sayed Haji Baitullah @
Baitullah Khan@ Salim ..Appellant
V/s
1. Shri T.T.V. Balchandran
Intelligence Ofifcer,
Narcotics Control Bureau,
Bombay and Another ..Respondents.

Mr. Ayaz Khan, Advocate for the appellant
Mr. Y.S. Shinde, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 26TH APRIL, 2007.

P.C.

. Heard Mr. Ayaz Khan, learned Counsel for the accused No.1/appellant in Criminal Appeal No. 261/2001. Read the letter dated 14/4/2007 from the District Prison Akola. By the said letter, the Superintendent, District Jail, Akola seeks clarification about the order passed by this Court in Criminal Appeal NO. 261/2001 in respect of the sentence awarded for the offence punishable under section 21 of NDPS Act.

2. To state in brief Sayed Haji Baitullah @ Saitullah Khan @ Salim, who was accused No.1 and

Nasarullah Abdul Rehman @ Munna @ Nasir, who was accused No.2 were prosecuted and put to trial for the different offences under NDPS Act in NDPS Special Case No. 152/1995 before the Special Judge, NDPS, Greater Bombay. After trial, by the judgment dated 12/1/2001 both the accused were convicted and sentenced for different offences. They were sentenced for the different offences as follows-

(a) They were convicted for the offence under section 29 r/w section 21 and 23 of NDPS Act and were sentenced to undergo R.I. for 13 years and to pay fine of Rs.3 lakh each and in default to pay fine to undergo further R.I. for two years.

(b) They were convicted for the offence punishable under section 21 NDPS Act and were sentenced to R.I. for 13 years and to pay fine of Rs. 3 lakh each and in default to undergo further R.I. for two years.

(c) They were convicted for the offence punishable under section 30 r/w section 23 and 24 NDPS Act and were sentenced to undergo R.I. for seven years and to pay fine of Rs.1,50,000/- and in default to undergo further

R.I. for one year.

(d) Accused No.1 Baitullah Khan was convicted also under section 27A r/w section 8(c) and 21 of the NDPS Act and was sentenced to undergo R.I. for 13 years and to pay fine of Rs.3 lakh and in default to undergo further R.I. for two years. The substantive sentence on all counts were to run concurrently.

3. Against the conviction and sentence both the accused preferred separate appeals. They were heard and disposed off together by common judgment dated 1st March, 2002. While conviction on all the counts was maintained. In Appeal, after hearing the learned Counsel for the appellants the sentence was modified on two counts i.e. (a) and (d). Para 18 of the judgment reads as follows-

> "The learned Counsel for the appellants alternatively submitted that the sentence of 13 years R.I. passed against both the appellants by the Trial Court is very harsh and therefore, leniency should be shown in that regard especially when both the appellants are bread earners of their respective families. I have given due consideration to the said submission and have come to the conclusion that the substantive sentence requires modification to

the extent which would meet the ends of justice.

In view of this, this Court (Coram:-P.V. Kakade, J.) passed the following order in para 19.

> "In the result, both the appeals are partly allowed.
>
> The order of conviction and sentence passed against both the appellants under all the said counts is hereby confirmed. The substantive sentences passed against both the appellants of R.I. for 13 years for the offence under section 29 read with section 21 and 23 of the MDPS Act alongwith Sec. 27A read with 8(c) and 21 of the NDPS Act is modified to R.I. for 10 years.
>
> The remaining sentences including the sentence of fine and imprisonment in default of payment of fine remains unchanged against both the appellants."

As noted above, as for as the sentence under count (c) was concerned it was sentence of R.I.for seven years and that was left undisturbed. It appears that the learned Judge felt that 13 years R.I. was excessive and should be brought down to R.I. of 10 years and in respect of of count (a) and (d) it was specifically mentioned that the sentence was reduced to R.I. of 10 years. It indicates that learned Judge, in fact wanted to reduce the sentence from R.I. of 13 years to R.I. for 10

years on all three counts i.e. (a), (b) and (d) but possibly due to oversight, mentioned of the conviction and sentence under section 21 NDPS Act was left out in the final order. Otherwise the very purpose of reducing sentence under count (a) and (d) would be frustrated.

3. Therefore, I find the said order may be clarified as follows:-

. The sentence for the offence punishable under section 21 NDPS Act stands modified from R.I. for 13 years to R.I. for 10 years in respect of both accused.

. The order be communicated to the Superintendent, District Prison, Akola.

(J.H. BHATIA, J.)